

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALAN I. LEVITT,
Appellant,
vs.
MV TRANSPORTATION, INC., A
NEVADA CORPORATION (2010) AND A
CALIFORNIA CORPORATION (1978),
Respondent.

No. 76603-COA

FILED

SEP 12 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Alan I. Levitt appeals from a district court order granting summary judgment in a tort action. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

Levitt sued MV Transportation, Inc. (MV), for negligence and negligent entrustment, alleging that he was injured in a collision while riding as a passenger on an MV bus. Following the close of discovery, MV moved for summary judgment, arguing that Levitt had failed to comply with discovery rules and produce any evidence of causation or damages. Levitt opposed the motion, but the district court granted it, concluding that Levitt had failed to comply with the disclosure requirements of NRCPC 16.1 and 26.¹ The district court determined that Levitt was precluded under NRCPC

¹The Nevada Rules of Civil Procedure were amended effective March 1, 2019. See *In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). Accordingly, we cite the previous versions of the applicable rules herein.

37(c)(1) from using any undisclosed evidence at trial, and because Levitt had not disclosed any evidence of causation or damages, he failed to demonstrate a genuine issue of material fact sufficient to overcome summary judgment. This appeal followed.

This court generally reviews a district court's decision to impose discovery sanctions for an abuse of discretion. *Foster v. Dingwall*, 126 Nev. 56, 65, 227 P.3d 1042, 1048 (2010). But we review a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* The moving party "bears the initial burden of production to show the absence of a genuine issue of material fact." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). Where the nonmoving party would bear the burden of persuasion at trial, the moving party may meet its burden of production by "pointing out . . . that there is an absence of evidence to support the nonmoving party's case." *Id.* at 602-03, 172 P.3d at 134 (internal quotation marks omitted). In response, the nonmoving party may not rely upon general allegations and conclusory statements, but must instead, "by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue." *Wood*, 121 Nev. at 731, 121 P.3d at 1030-31 (internal quotation marks omitted).

On appeal, Levitt does not actually address the specific grounds on which the district court entered summary judgment; instead, he broadly argues only that he had demonstrated below that genuine issues of material

fact remained such that summary judgment was inappropriate. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived); *Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (“This court need not consider conclusory arguments which fail to address the issues in the case.”). Moreover, apart from the issue of whether Levitt complied with discovery rules, the record reveals that he failed to provide any evidence of causation or damages with his opposition to MV’s motion for summary judgment. Rather, he filed both an opposition and an amended opposition in which he referenced but failed to attach multiple exhibits he claimed demonstrated genuine issues of material fact. It was only after the district court had already ruled on the motion in chambers that Levitt filed yet another amended opposition with exhibits attached.² *See Wood*, 121 Nev. at 731, 121 P.3d at 1030-31.

Finally, with respect to the district court’s application of Rule 37(c)(1), the record reveals that Levitt failed to supplement his Rule 16.1 disclosures to properly identify any evidence of his injuries or the cause thereof, any of his treating physicians, or any other experts until after the close of discovery. *See* NRC 16.1(a)(1)(C) (requiring disclosure of evidence upon which a computation of damages is based, “including materials bearing on the nature and extent of injuries suffered”), (2)(B) (setting forth

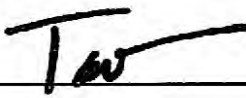
²To the extent Levitt challenges the district court’s decision to rule on MV’s motion in chambers without an oral hearing, we note that the district court followed the procedures set forth in the local rules for ruling upon motions without oral argument. *See* EDCR 2.23(c)-(d) (providing that a court may rule on a motion without hearing oral argument, and if it chooses to do so, it must remove the motion from the calendar and enter a minute order reflecting the same). Thus, his argument on this point is without merit.

disclosure requirements for non-retained and retained experts); NRCP 26(e)(1) (requiring parties to supplement their Rule 16.1(a) disclosures with additional information that has not been previously disclosed); NRCP 37(c)(1) (stating that parties are generally not permitted to use evidence they failed to disclose under Rule 16.1 or 26(e)(1) at trial). Accordingly, we discern no abuse of discretion in the district court's decision to impose discovery sanctions and, because Levitt therefore failed to demonstrate any genuine issues of material fact, the court did not err in granting summary judgment to MV.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao

cc: Hon. Rob Bare, District Judge
Alan I. Levitt
Wood, Smith, Henning & Berman, LLP/Las Vegas
Eighth District Court Clerk

³The Honorable Bonnie A. Bulla, Judge, voluntarily recused herself from participation in the decision of this matter.